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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
ROSS F. GREENWOOD,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 1008

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER.

This matter, the appeal of a \$250.00 Civil Penalty for burning a land clearing fire without a population density verification approval in violation of Respondent's Regulation I, came on for formal hearing before the Pollution Control Hearings Board, Chris Smith, Chairman, W. A. Gissberg and Art Brown, in Lacey, Washington, on August 24, 1976.

Appellant Ross F. Greenwood appeared pro se; Respondent Puget Sound Air Pollution Control Agency was represented by its attorney Keith D. McGoffin

From testimony heard and exhibits examined, the Pollution Control

1 | Hearings Board makes these

2 | FINDINGS OF FACT

3 | I.

4 | Pursuant to RCW 43.21B.260, Respondent filed its Regulation I  
5 | with the Pollution Control Hearings Board and official notice thereof  
6 | is hereby taken.

7 | II.

8 | At 9:50 a.m. on March 25, 1976, a Puget Sound Air Pollution  
9 | Control inspector observed an outdoor fire at 5409 Chicago Avenue  
10 | S.W., Tacoma, Washington. The fire was a burning of a pile of tree  
11 | clippings allegedly six to seven feet wide and four feet high. A  
12 | Notice of Violation was issued as it was determined by the inspector  
13 | that the burning was a land clearing fire and no population density  
14 | verification approval had been obtained by the Appellant as required  
15 | under Section 8.06(3) of Respondent's Regulation 1.<sup>1</sup> While the subject  
16 | property is within the Tacoma urbanized area, Respondent Puget Sound Air  
17 | Pollution Control Agency did not know if a fire on the instant site  
18 | would have been approved or disapproved under Section 8.06(3).

19 | III.

20 | A Notice and Order of Civil Penalty in the amount of \$250.00 was  
21 | assessed against Appellant on April 1, 1976, from which he timely

22 | \_\_\_\_\_  
23 | <sup>1</sup> Section 8.06 - Land Clearing Burning. It shall be unlawful for  
24 | any person to cause or allow any outdoor fire for land clearing burning:  
25 | ... (3) Within the urbanized area as defined by the United States Bureau  
26 | of Census unless the Agency has verified that the average population  
27 | density on the land within 0.6 miles of the proposed burning site is  
2,500 persons per square mile or less.

27 | FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER - 2

1 appealed to the Board on April 6, 1976.

2 The agency imposed a civil penalty of \$250.00 in this instance  
3 as Appellant had been cited on January 23, 1976, for an open burning  
4 violation at another address at which time he was handed a copy of the  
5 agency regulations; no civil penalty was imposed in this earlier case.<sup>2</sup>

6 IV.

7 The burning of the pile of clippings and debris in the instant  
8 matter was part of a cooperative neighborhood project to cut down  
9 twenty substantial fir trees which had become hazardous to adjacent  
10 homes and telephone lines. The limbs were chopped and the larger  
11 pieces were either hauled to the dump or sold. For two weeks prior to  
12 the alleged violation, Mr. Greenwood and his neighbors had been raking  
13 the smaller leavings of each tree into four or five piles and burning  
14 each pile before the next tree was felled.

15 Three neighbors estimated the size of the cited burning pile as  
16 less than four feet in diameter by three feet in height. The pile was  
17 on Appellant's land and had been lit by him or his designee.

18 V.

19 Appellant Greenwood did have a permit from the Lakewood Fire  
20 Department for the burning of a "residential fire."

21 VI.

22 Any Conclusion of Law hereinafter stated which may be deemed a  
23 Finding of Fact is hereby adopted as such.

24

25 <sup>2</sup>The specific violation was Mr. Greenwood's burning of natural  
26 vegetation as owner of a rental unit rather than as resident of the unit  
per Section 9.02(d)(1)(i) of Regulation 1.

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER - 3

1 From these Findings of Fact, the Board comes to these

2 CONCLUSIONS OF LAW

3 I.

4 Failure to obtain a population density verification is a violation  
5 of Section 8.06 of Regulation 1, entitled Land Clearing Burning. While  
6 establishing five conditions regulating residential burning, Section  
7 8.09 of Regulation 1 has no comparable requirement for population  
8 density verification. Thus the Board must initially classify the  
9 burning to determine if the requirement allegedly violated was in  
10 fact applicable.

11 II.

12 Article 1 Section 1.07, of Respondent's Regulation 1 reads in  
13 relevant part as follows:

- 14 (mm) "Residential burning" means a small outdoor fire consisting  
15 of leaves, clippings, prunings, and wood, so long as it has  
16 not been treated by an application of prohibitive material  
17 or substances, and other yard and gardening refuse originating  
18 on lands immediately adjacent and in close proximity to a  
19 human dwelling and burned on such lands by the property owner  
20 or his designee.  
21 (nn) "Land clearing burning" means outdoor fires consisting of  
22 residue of a natural character such as trees, stumps,  
23 shrubbery or other natural vegetation arising from land  
24 clearing projects and burned on the lands on which the  
25 material originated.  
26 (oo) "Small outdoor fire" means a fire in a pile no more than  
27 four (4) feet in diameter and three (3) feet in height.

22 III.

23 The proper classification of a burning pile cannot be determined  
24 solely by its size. A burning may well not meet the definition of a  
25 residential burning because it fails to meet the size standard established  
26 thereunder (4' x 3'). Such excessive size in itself, however, does  
27 FINAL FINDINGS OF FACT,  
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1 not render this burning a land clearing burning subject to the  
2 requirements of Section 8.06.

3 IV.

4 Further, the fact that a number of trees are felled with consequent  
5 large amounts of clippings, etc., does not preclude resultant burnings  
6 from being considered "residential" or dictate that such burnings be  
7 deemed "land clearing." Indeed, the standards controlling residential  
8 burnings anticipate quantities of refuse in requiring under Section  
9 8.09(3) that "Only one pile be burned at a time and each pile be  
10 extinguished before another is lighted."

11 V.

12 The Board concludes that considering the purpose of the Appellant's  
13 cited activity and the manner in which the piles were formed and burned,  
14 the character of the burning as "land clearing" is not clearly establishe  
15 Thus, the Board cannot conclude that Section 8.06 and its requirements  
16 are applicable to the facts of this case.

17 VI.

18 Where the applicability of a Section's requirements to a given  
19 set of facts is ambiguous to a Board experienced in interpreting the  
20 provisions of Regulation 1, no civil penalty for an alleged violation  
21 can be sustained. Particulary is this true under the facts of this  
22 case where the requirement at issue is a technical one, an effort was  
23 made to obtain a burning permit, and the pollutant impact of the  
24 allegedly unauthorized action is minimal.

25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER - 5

VII.

Any Finding of Fact hereinafter stated which may be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law, the Board enters this

ORDER

The Order of Civil Penalty in the amount of \$250.00 is vacated.

DATED this 29<sup>th</sup> day of September, 1976.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith

CHRIS SMITH, Member

W.A. Gissberg

W.A. GISSBERG, Member

Art Brown

ART BROWN, Chairman

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